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SERVICE DATE – MAY 22, 2006

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB-12 (Sub-No. 92)

SOUTHERN PACIFIC TRANSPORTATION COMPANY—ABANDONMENT—IN LASSEN COUNTY, CA

Decided: May 19, 2006

On May 8, 1985, Southern Pacific Transportation Company (SPT) filed an application to abandon 22.65 miles of rail line between Wendel (milepost 359.50) and Susanville (milepost 382.15), in Lassen County, CA. Public notice was properly given. Because no offers of financial assistance were filed, the Board's predecessor, the Interstate Commerce Commission (ICC), issued a certificate and decision on December 3, 1985, subject to employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), authorizing SPT to cancel its tariffs and abandon the line. By letter filed on August 19, 1987, SPT advised the ICC that it had exercised its abandonment authority.

On May 9, 2006, Lassen County, CA (County) filed a request for issuance of a Certificate of Interim Trail Use (CITU) and for imposition of a public use condition. On May 11, 2006, Union Pacific Railroad Company (UP) replied to the County's request. UP states that the abandonment was consummated over 20 years ago, and following consummation, the line was leased as a private railroad which has now discontinued operations. UP further states that the Board lacks authority to issue a CITU or to impose a public use condition.

A line is fully abandoned after a certificate of public convenience and necessity has been issued, operations have ceased, and a letter has been filed with the agency stating that the abandonment has been consummated. Upon consummation of abandonment, the line is no longer a rail line subject to agency jurisdiction. See Black v. ICC, 762 F.2d 106, 112 (D.C. Cir. 1985); Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 135 (1980).

Under 49 U.S.C. 10905 and 49 CFR 1152.28, this agency may only impose a public use condition for up to 180 days after the effective date of a decision authorizing abandonment. Thus, the agency's jurisdiction to impose a public use condition expires at the end of that period. Under 49 CFR 1152.29, the agency may permit the parties to negotiate for trail use for a 180-day period, but only if the abandonment has not been consummated. Because the record indicates that the time for imposing a public use condition in this proceeding is long past and that this line has long been fully abandoned, the Board lacks

jurisdiction to issue a CITU or to impose a public use condition. Accordingly, the relief sought by the County will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The County's request for issuance of a Certificate of Interim Trail Use and for imposition of a public use condition is denied.
2. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary